

REMARKS

Upon entry of the present amendment the claims under consideration are 22, 26-37, and 39. The independent Claims, 22 and 37, have been amended to make clear that the machine direction stretchability of the biaxially stretchable breathable laminate of the present invention is achieved by creping without the use of intermediate mechanical fixing steps. Claim 39 has been placed in independent form with unchanged subject matter. No new matter is added hereby. The Detailed Action of 01 May 2003 will now be addressed with reference to any headings and paragraph numbers contained therein.

Claim Rejections - 35 U.S.C. §103

Per paragraph 3 of the Detailed Action, Claims 22, 26-37 and 39 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,883,028 to Morman et al. (Morman '028) in view of U.S. Patent No. 6,129,801 to Benson et al. (hereinafter "Benson"). Applicants have amended the independent Claims and further traverse these rejections in part, as set forth below.

Applicants have herewith amended the independent Claims 22 and 37 to make clear that the machine direction stretchability of the biaxially stretchable breathable laminate of the present invention is achieved by creping without the use of intermediate mechanical fixing steps. Such intermediate mechanical fixing steps as are taught in Benson represent additional processing over the present invention which can lead to an increased chance of changing the structure or damaging the fibers or nonwoven the web. As would be clear to a person having ordinary skill in the art, such change or damage may result in loss of the designed-in performance of the initial web, including structural strength, loft, porosity, hand, or other physical factors.

Particularly with respect to Claims 29-35, it is noted that the Detailed Action refers to the present claim limitations as reasonably presumed to be met by "a

combination of the three references." As only two references are under discussion in the present paragraph 3, Applicants respectfully traverse these rejections and request a specific explanation of the rejections in a further non-final action.

Particularly with respect to Claim 39, it is noted that Claim 39 appears to be addressed only by paragraph 4 of the Detailed Action and not the present paragraph 3. Therefore, it is respectfully requested that the instant rejection be removed with respect to Claim 39.

Per paragraph 4 of the Detailed Action, Claim 39 stands rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,883,028 to Morman et al. (Morman '028) in view of Benson and U.S. Patent No. 5,554,143 to Roe et al. (hereinafter "Roe"). Roe teaches an absorbent article having a unique waist feature that includes a structural elastic-like film that may be prestretched to give the material added bulk, while in contrast, the present invention teaches pre-stretching a film to provide machine direction stretch to a resulting laminate. Thus, the suggested combination of references would not occur to the person having ordinary skill in the art, nor teach the present invention. The proffered combination is clearly a *post hoc* rationalization made with the present invention firmly in mind. It is therefore respectfully requested that the present rejection be withdrawn.

Conclusion

Applicants believe that this case is now in condition for allowance. A notice to that effect is earnestly solicited. If the Examiner feels that any issues remain upon consideration of the present amendment, the Examiner is invited to contact Applicants' undersigned attorney to discuss the case.

As the total number of independent Claims remains 3, it is believed that no additional fees are owing for the newly amended Claim 39 in independent form.

Favorable consideration is requested.

Respectfully submitted,



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